

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

DEREK Q. JAMES, Register No. 182777,)
))
 Plaintiff,))
))
 v.) No. 05-4328-CV-C-NKL
))
G. JORGENSON, et al.,))
))
 Defendants.))

ORDER

On May 24, 2006, the United States Magistrate Judge recommended granting the motion of defendants Lewis, Laramore, Garcia and Hardman to dismiss plaintiff's claims for failure to exhaust administrative remedies, pursuant to 42 U.S.C. § 1997e. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record¹, including the exceptions filed by plaintiff on May 30, 2006. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

On May 31, 2006, defendant Jorgenson filed a motion to dismiss plaintiff's claims for failure to exhaust administrative remedies, pursuant to section 1997e. Pursuant to the findings set forth in the May 24, 2006 report and recommendation, which this court has adopted, upon review, defendant Jorgenson's motion to dismiss is granted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

¹Court proceedings, if any, are recorded by electronic recording equipment and the tapes are available for review by the court and counsel.

IT IS, THEREFORE, ORDERED that the Magistrate Judge's May 24, 2006 Report and Recommendation is adopted [56]. It is further

ORDERED that defendants' motions to dismiss, pursuant to 42 U.S.C. § 1997e, are granted, and plaintiff's claims are dismissed, without prejudice [39, 64]. It is further

ORDERED that plaintiff's motions for orders regarding such claims are denied, without prejudice [22, 27].

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: July 28, 2006
Jefferson City, Missouri